



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01618
)
Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 13, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on November 20, 2020, and requested a decision based on the written record in lieu of a hearing. On April 20, 2021, she changed her request to a hearing before an administrative judge. The case was assigned to me on April 1, 2022.

The hearing was convened as scheduled on May 26, 2022. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified, called six witnesses, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor, where she has worked since 2008. She seeks to retain a security clearance, which she has held for many years. She has a bachelor's degree that she earned in 1996, and she took real estate classes in 2003. She is twice married and divorced, with two adult children. She resides with her fiancé. (Tr. at 12-13, 30, 60-61, 94; Applicant's response to SOR; GE 1, 7)

The SOR alleges eight delinquent debts totaling about \$71,963. Applicant denied that she currently owed the debts as they were beyond her state's statute of limitations. The debts are established by credit reports and Applicant's admissions.

Applicant and her second husband divorced in 2010. Her ex-husband received the house, but had to pay the mortgage loan, which was in both of their names. He was supposed to refinance the loan to remove Applicant's name from the loan. A credit report from February 2013 indicated that the mortgage loan was still in both of their names. A November 2019 credit report showed the mortgage loan as closed, apparently in May 2019. (Tr. at 64; Applicant's response to SOR; GE 1, 4, 5, 7)

Applicant borrowed from her 401(k) retirement account and bought a foreclosed house on her block for \$24,500 in 2011. She knew the house needed work, but she did not realize how much work until she started renovating it. At the time, Applicant lived next door in a rented home with her boyfriend (not her current fiancé). Applicant, her ex-boyfriend, and a witness described how much work was put into the house by Applicant, her ex-boyfriend, and their friends. Applicant financed the out-of-pocket expenses of about \$75,000 with credit cards. She was unable to obtain a mortgage loan because she was still on the loan on the house where her ex-husband was living. (Tr. at 22-24, 34-39, 62-64; Applicant's response to SOR; GE 1-5, 7; AE B)

Applicant and her then boyfriend moved into the house about a year after the purchase. They fostered two siblings for a period. Applicant and her boyfriend later separated, and he moved out in about 2018 or 2019. Applicant was able to keep her credit cards current, but the high balances caused some of the cards to raise the interest rates. (Tr. at 35, 40, 46-47, 63, 85-87, 91-92; Applicant's response to SOR; GE 1, 3, 4, 7)

In about 2014, Applicant sought the services of a debt settlement company. She was told to stop paying her credit cards, so that the company could negotiate settlements with the creditors. She enrolled her debts into the company's debt relief plan. She paid \$734 every two weeks into a dedicated account. The company would negotiate settlements with her creditors and pay the settlement amounts, plus their fees, out of the dedicated account. (Tr. at 40-43, 64-66, 80; Applicant's response to SOR; GE 1, 7; AE B, C)

One of the creditors informed Applicant that she would be sued if she did not pay that account. The debt settlement company was unable to help her. She was afraid of

putting so much toward the debt relief plan when a creditor could still sue her, and she would not have the funds to pay that creditor. She withdrew from the debt relief plan in about October 2015. She paid a total of about \$29,117 into the program. Two debts totaling about \$20,000 were settled. She received a refund of about \$2,619, and the rest went to the company's fees. (Tr. at 66-70, 80-85; Applicant's response to SOR; GE 3-5, 7; AE B, C)

Applicant settled the debt from the company that threatened to sue her, but did not pay any other debt after she withdrew from the debt relief plan. She stated that she put the money in an account to be used if she was sued by another creditor or to eventually pay the debts. (Tr. at 81-85; Applicant's response to SOR; GE 1, 3-5, 7; AE A-C)

Applicant went to a financial advisor in 2017. She wanted to pay her debts and contemplated selling her house to do so. The advisor told her that she should keep the house, but work separately to pay her debts. She followed the advice to not sell the house, but she did not pay the debts. Applicant worked for her employer on temporary assignment in another state for an extended period in 2018. She was able to save \$20,000, but that was not enough to pay the debts. She took another assignment in a third state for almost a year. She worked long hours, six days a week. By the time she returned in 2020, with overtime and per diem, she saved about \$75,000, which was enough to pay her debts. (Tr. at 47-49, 70-72; Applicant's response to SOR)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2019 while she was on temporary assignment for her company. She fully reported her financial issues and delinquent debts. She wrote: "I am completely responsible for the current debt and I have a plan in progress to pay it off." She was interviewed for her background investigation in December 2019. She stated that she believed that all of her debts would be settled or paid by early 2020. (GE 1, 7)

Applicant retained an attorney in 2020 to locate her creditors and ensure the right company was paid. After researching the debts, her attorney informed her that most of the debts could not be legally enforced because they were beyond the statute of limitations. Two of the debts might not have been beyond the statute of limitations because they were being paid by the debt settlement company. She followed his advice to not pay any of the debts. None of the debts alleged in the SOR have been paid. (Tr. at 72-75, 87-91, 98; Applicant's response to SOR; GE 3, 4; AE A, C)

Applicant is engaged to be married to a gentleman she met on her last assignment. She sold her house in January 2022, which was unencumbered by any mortgage or lien, for \$255,000. She is holding \$80,000 from the proceeds as a down payment on a new home; she paid about \$43,000 toward her student loans; and she bought a new car for about \$30,000. Other than the unpaid SOR debts, her finances are in good shape. (Tr. at 76, 91-93; AE A)

Applicant called witnesses, and she submitted documents and letters attesting to her excellent job performance and strong moral character. She is praised for her

honesty, trustworthiness, professionalism, dedication, loyalty, reliability, judgment, sincerity, and integrity. She is recommended for a security clearance. (Tr. at 19-61; AE D)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts and financial problems. The evidence indicates that it was initially difficult for her to pay her debts, but clearly she could pay the debts at some point, she just chose not to. AG ¶¶ 19(b) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's plan to buy and renovate a house worked out very well for her. Not so much for most of the creditors that funded the renovations. She put a lot of "sweat equity" into the house, as did her friends. She paid about \$29,117 into the debt relief plan, settling two debts in the process, and she settled a third debt. Even accounting for those figures, she profited more than \$150,000 on the sale of her house, and she never had to pay rent or a mortgage loan.

Applicant is relying on the statute of limitations and that the debts are no longer listed on her credit report. However, reliance on the statute of limitations does not constitute a good-faith effort to resolve debts. See *e.g.*, ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues cast doubt on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.h:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge